

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35023

GUY MICHAEL COOK,)	2009 Unpublished Opinion No. 422
)	
Petitioner-Appellant,)	Filed: April 9, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
STATE OF IDAHO,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Respondent.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Charles W. Hosack, District Judge.

Order dismissing application for post-conviction relief, affirmed.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

PERRY, Judge

Guy M. Cook appeals from the district court's order dismissing his application for post-conviction relief after an evidentiary hearing. For the reasons set forth below, we affirm.

I.

FACTS AND PROCEDURE

Cook pled guilty to possession of methamphetamine.¹ I.C. § 37-2732(c)(1). In exchange for his guilty plea, the state dismissed two misdemeanor charges and agreed to recommend probation. At the change of plea hearing, Cook expressed some reservation to pleading guilty because he contended that he borrowed the coat he was wearing at the time police searched him and that he did not know that the methamphetamine was in the pocket. The district court advised

¹ For a complete description of the facts underlying this charge, see this Court's unpublished opinion in Cook's direct appeal. *State v. Cook*, Docket No. 31640 (Ct. App. June 13, 2006).

him that a jury could still find him guilty of the charge despite his story. After further consulting with trial counsel, Cook decided to plead guilty. Before sentencing, Cook was again arrested on unrelated charges. Cook then filed a motion to withdraw his guilty plea, arguing that he was having problems with medication at the time he entered his plea and thought that the charge had been dismissed. The district court denied his motion because he had not established just cause to withdraw the plea. The district court then sentenced Cook to a unified term of three years and six months, with a minimum period of confinement of one year and six months.

On direct appeal, Cook argued that he should be able to withdraw his guilty plea because the district court led him to believe that the jury could find him guilty of possession of methamphetamine even if it found that he was not aware that he possessed the drugs in the coat pocket. In an unpublished opinion, this Court affirmed the denial of Cook's motion to withdraw his guilty plea because he did not raise this ground for withdrawal before the district court.

Cook then filed an application for post-conviction relief alleging, among other things, ineffective assistance of trial counsel for failing to adequately inform him of an element of the crime of possession of a controlled substance--that the possession must be knowing. After an evidentiary hearing on this issue, the district court denied Cook's application, finding that Cook had been adequately advised of the knowledge element and that he had failed to show that a more explicit explanation would have caused him to plead not guilty. Cook appeals.

II.

ANALYSIS

An application for post-conviction relief initiates a proceeding which is civil in nature. *State v. Bearshield*, 104 Idaho 676, 678, 662 P.2d 548, 550 (1983); *Clark v. State*, 92 Idaho 827, 830, 452 P.2d 54, 57 (1969); *Murray v. State*, 121 Idaho 918, 921, 828 P.2d 1323, 1326 (Ct. App. 1992). Like a plaintiff in a civil action, the applicant must prove by a preponderance of evidence the allegations upon which the request for post-conviction relief is based. I.C. § 19-4907; *Russell v. State*, 118 Idaho 65, 67, 794 P.2d 654, 656 (Ct. App. 1990). When reviewing a decision denying post-conviction relief after an evidentiary hearing, an appellate court will not disturb the lower court's factual findings unless they are clearly erroneous. I.R.C.P. 52(a); *Russell v. State*, 118 Idaho 65, 794 P.2d 654 (Ct. App. 1990). The credibility of the witnesses, the weight to be given to their testimony, and the inferences to be drawn from the evidence are all matters solely within the province of the district court. *Larkin v. State*, 115 Idaho 72, 73, 764

P.2d 439, 440 (Ct. App. 1988). We exercise free review of the district court's application of the relevant law to the facts. *Nellsch v. State*, 122 Idaho 426, 434, 835 P.2d 661, 669 (Ct. App. 1992).

A claim of ineffective assistance of counsel may properly be brought under the post-conviction procedure act. *Murray v. State*, 121 Idaho 918, 924-25, 828 P.2d 1323, 1329-30 (Ct. App. 1992). To prevail on an ineffective assistance of counsel claim, the defendant must show that the attorney's performance was deficient and that the defendant was prejudiced by the deficiency. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Hassett v. State*, 127 Idaho 313, 316, 900 P.2d 221, 224 (Ct. App. 1995). To establish a deficiency, the applicant has the burden of showing that the attorney's representation fell below an objective standard of reasonableness. *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988). Where, as here, the defendant was convicted upon a guilty plea, to satisfy the prejudice element, the claimant must show that there is a reasonable probability that, but for counsel's errors, he or she would not have pled guilty and would have insisted on going to trial. *Plant v. State*, 143 Idaho 758, 762, 152 P.3d 629, 633 (Ct. App. 2006). This Court has long adhered to the proposition that tactical or strategic decisions of trial counsel will not be second-guessed on appeal unless those decisions are based on inadequate preparation, ignorance of relevant law or other shortcomings capable of objective evaluation. *Howard v. State*, 126 Idaho 231, 233, 880 P.2d 261, 263 (Ct. App. 1994).

At the evidentiary hearing on Cook's application for post-conviction relief, Cook offered evidence in the form of his own testimony as well as the transcripts from his change of plea hearing and the hearing on his motion to withdraw his guilty plea. The state presented testimony from Cook's trial counsel. At the change of plea hearing, the district court read the amended information to Cook and the following exchange occurred:

[COURT]: All right. Then I have gone through the crime here that you have been charged with and the amount of punishment that can be imposed and the rights that you do give up if you do enter a guilty plea. With that in mind, Mr. Cook, how do you plead here to the charge of possession of a controlled substance, specifically methamphetamine?

....

[COOK]: Guilty.

....

[COURT]: You feel that circumstances are such that is one of the reasons -- has your attorney talked to you about what things might happen to you if you don't take the plea agreement?

[COOK]: We have discussed both sides of it.

[COURT]: And do you feel that of the various options you have available to you, none of them, I guess, make you feel or you are particularly happy with but of the options you have available to you, you think this is a choice you wish to make?

[COOK]: Under the circumstances, yeah.

[COURT]: All right. Is one of the reasons that you are choosing to enter into the guilty plea is that you do agree . . . you did in fact unlawfully -- you did in fact have in your possession either methamphetamine or amphetamine?

[COOK]: Without my knowledge, yes.

[COURT]: I beg your pardon?

[COOK]: Without my knowledge, yes. I had no knowledge I possessed that.

[COURT]: Well, how did you have it if you didn't possess it?

[COOK]: I had three coats on. It was cold out. A couple of the coats were not mine. I pulled them out of a vehicle that was purchased from someone.

[COURT]: All right. So, and the methamphetamine was in one of those coats?

[COOK]: Unfortunately. I allowed the officers to search me because I didn't believe there would be anything like that on me.

[COURT]: All right. Okay. But you are pleading -- so you are pleading guilty to the charge here because you recognize the facts are that --

[COOK]: Possession.

[COURT]: -- the methamphetamine was in the pockets of a coat that you were wearing.

[COOK]: Yeah.

....

[COURT]: And do you understand that that's, based upon that evidence, that as far as the law is concerned, a jury can find you guilty of the acts of possession of methamphetamine based upon those acts?

[COOK]: Yes.

[COURT]: All right. And you agree that while you may dispute the knowledge of intent but -- the degree of your knowledge, but you do agree that you did commit the acts of having the methamphetamine in the clothing that you were wearing?

[COOK]: Yes, sir.

[COURT]: And that's why you are entering the guilty plea?

[COOK]: Yes.

During cross-examination at the post-conviction hearing, Cook testified concerning his exchanges with trial counsel and the district court before and during the change of plea hearing:

[PROSECUTOR]: Did [trial counsel] explain to you that, based on the facts, the fact there was methamphetamine in a coat you were wearing, that the jury could find you guilty?

[COOK]: I think so, yes.

[PROSECUTOR]: Didn't the judge also discuss with you that based on those same facts a jury could find you guilty?

[COOK]: Yeah.

[PROSECUTOR]: So you understood that even if you say you said to the jury that I didn't know it was my meth, the jury could disbelieve you and still find you guilty?

....

[COOK]: Could, yes.

[PROSECUTOR]: And they could find you guilty if that is what they chose to believe?

[COOK]: Possible, yes.

[PROSECUTOR]: And you were advised of all of those things before you entered your guilty plea?

[COOK]: Yeah.

Also at Cook's evidentiary hearing, his trial counsel testified as to conversations with Cook regarding the elements of possession:

[PROSECUTOR]: Did you explain to Mr. Cook that a jury could find him guilty based on the methamphetamine in the coat even if he says he didn't know it was there?

[TRIAL COUNSEL]: I think I probably told him that I thought it was very likely that a jury would find him guilty and that, effectively, the burden was shifted to us under those circumstances where actual personal control or possession -- maybe not possession in the legal sense, but possession, for us to come forward with evidence that the coat -- in this case the coat actually belonged to someone else, to explain the circumstances of how he could -- why he would have that coat with methamphetamine in it on him and, you know, come up with an explanation for that.

[PROSECUTOR]: And you used the word "effectively shift the burden." Are you distinguishing between the legality that the burden is on the state versus the practicality --

[TRIAL COUNSEL]: The practicality -- yeah, and I think it was explained how an actual jury would view that situation, that a jury has to have some sort of explanation to them as to how the person ends up carrying a controlled substance and not knowing.

[PROSECUTOR]: Do you recall discussing the specific elements of the crime of possession of methamphetamine with Mr. Cook?

[TRIAL COUNSEL]: I don't think I did in so many words. I think I did as far as context of the discussion as far as telling him that I thought we needed some explanation where the coat came from and proof where the coat came from.

[PROSECUTOR]: Do you recall making reference to either an intent or a knowledge-type element or that as a part of proving the crime there is an intent element?

[TRIAL COUNSEL]: Again, I don't clearly remember that. I can remember the context of the discussion.

Later, during cross-examination, trial counsel testified:

[COUNSEL]: And it was obvious to you in this discussion about who owned the coat that knowledge was a potential defense, I take it?

[TRIAL COUNSEL]: Yeah, and that's why I guess I assumed that because we were talking about that defense that he understood it, that that was what we were talking about.

[COUNSEL]: But that's my next question. Did you ever tell him that, well, you know, a jury would have to conclude that you knew it was in the pocket? Do you ever remember saying that to him?

[TRIAL COUNSEL]: Not in so many words, I don't think I did.

....

[COUNSEL]: And during that break in the [change of plea] proceedings, do you recall ever explicitly telling Mr. Cook that a jury would have to conclude that -- would have to believe beyond a reasonable doubt that he knew about these drugs in his pocket to convict him?

[TRIAL COUNSEL]: I think at some point we discussed an Alford and what an Alford plea was, although it wasn't used. But, again, expressly whether the jury would have to take their finding of knowledge and some sort of intent or intent to control, yeah, I do not remember discussing that with him.

Trial counsel also testified that, while he never explicitly told Cook about the knowledge element of possession, Cook at all times appeared to understand the nature of the charges against him, including the knowledge or intent element of the charge of possession of a controlled substance.

After the evidentiary hearing, the district court found that Cook had failed to show that he was inadequately informed of the knowledge element in a charge of possession of a controlled substance. Due process does not require that an explanation of every element of the offense must always be given to the defendant on the record before a valid guilty plea may be taken. *State v. Mayer*, 139 Idaho 643, 647, 84 P.3d 579, 583 (Ct. App. 2004). An adequate understanding of the offense may be gained by a defendant in ways other than an explication from the court. *Id.*

At the change of plea hearing, the district court read the amended information to Cook. The amended information did not explicitly provide that Cook knowingly possessed methamphetamine, but provided that he possessed it unlawfully. Cook had ample opportunity to

discuss the charge with his attorney both before and during the change of plea hearing. The issue of knowledge was actually raised by Cook himself. In fact, Cook has maintained from the moment of his arrest that he did not knowingly possess the methamphetamine. He advocated that position to his trial counsel and to the district court. This now belies his argument that he was ignorant of this element. Furthermore, Cook clearly understood that a jury could disbelieve his story and find him guilty notwithstanding his claim of ignorance, and he indicated that this was a factor in his decision to enter a guilty plea. Based on the totality of this evidence presented during the evidentiary hearing, we conclude that Cook has failed to show ineffective assistance of counsel for inadequately informing him of the elements of the charge. Therefore, the district court did not err by denying Cook's application for post-conviction relief after an evidentiary hearing.

III. CONCLUSION

Cook failed to show ineffective assistance of counsel for failing to adequately inform him of the elements of the charged offense. Therefore, the district court did not err by denying Cook's application for post-conviction relief. Accordingly, the district court's order denying his application for post-conviction relief after an evidentiary hearing is affirmed. No costs or attorney fees are awarded on appeal.

Judge GUTIERREZ and Judge GRATTON, **CONCUR.**